

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO.1615 OF 1999

PROF.SAM TULYA MUHIKA KAPALA.....PLAINTIFF
VERSUS
THOMAS LUDINDI MWADEGHU.....DEFENDANT
EAST AFRICAN BUILDING SOCIETY.....3RD PARTY

RULING

BY Sale Agreement dated 27th May 1998 made between the plaintiff and the defendant, the plaintiff agreed to buy the suit property known as **LR NO. NAIROBI/BLOCK 32/591** at a consideration of Kshs.3,400,000/=. It was an express term of the agreement that upon payment of the full purchase price the defendant would deliver to the plaintiff:

(ii) A transfer deed duly executed

<p style="text-align:center">120px;"=""> (iii) Consents required by law

The full purchase price was paid by 20th November 1998 but the defendant failed to deliver the above stated documents to facilitate the transfer.

The plaintiff filed this suit seeking orders that the defendant be ordered to deliver the above document to him to effect the transfer. The defendant filed a defence dated 7th November 1999 in which he averred that the suit property was mortgaged to East African Building Society Ltd who have refused to discharge the property.

On an application by the defendant the court on 13th January 2000 granted leave to the defendant to issue a Third Party Notice to the East African Building Society Ltd the applicant herein.

The applicant now applies for orders that the proceedings herein against the Third Party be struck out. The application is based on the ground that the defendant has failed to serve the Third Party Notice since the leave was granted on 13th January 2000.

The respondent/defendant was served but did not show up to defend the application. Orders as prayed in paragraph 1 and 2 of the Notice of Motion dated 14th January 2005 granted.

Dated and delivered at Nairobi this 5th day of May 2005.

J.L.A. OSIEMO

JUDGE

